point to the fact that such failure is his own fault in that he did not fulfil the requirements of sub-section 7(1) in that petition. It is no use attributing failure to the stay order — that order ensued because of the initial failure of the petitioner himself. To hold otherwise would mean that a petitioner who had fulfilled the requirements of sub-section 7(1) and then failed to set down his petition through inadvertence or illness, would be in worse position than the present petitioner who in Petition No. 2 of 1948 had not fulfilled the requirments of sub-section 7(1), because the former petitioner would have to start *de novo* and the latter would not.

Further, if the legislature had intended that sub-section 7(5) should be construed entirely independent of the proviso to sub-section 5(4), I should have expected sub-section 7(5) to commence with some such words as "Notwithstanding the provisions of the proviso to sub-section (4) of section 5...".

I am unable to accept the other argument put forward by Mr. Hastings, that immediately a stay order is made under sub-section 7(4) time ceases to run under the proviso to sub-section 5(4). To agree with that argument would be tantamount to placing the Chief Justice in a position in which he could override the maximum period prescribed by the legislature in the proviso to sub-section 5(4).

Accordingly I hold that Petition No. 2 of 1948 lapsed twelve months from the date of posting of th last of the notices referred to in sub-section 5(2) — i.e. twelve months from the 4th February, 1948.

I would point out that the petitioner is not left without a remedy. By the proviso to sub-section 5(4) he can bring another petition *de novo*, and in fact he has done so.

Having so decided I now return to the second ground urged by Mr. Benjamin for shortening the time under sub-section 5(5). I regret I am unable to accept it as a special ground under that sub-section. It has no connection with the petitioner being engaged in the active practice of his profession. Nor can I regard this as an exceptional case because it may easily happen that similar cases may arise.

I make no order on the Motion.

No Order.

IN THE ESTATE OF YEO SENG WHATT (Deceased)
CHUA IP NEO (w) v. TAN KEH NEO (w) & ANOR.

[Orig. Civil Juris. (Callow, J.) October 28, 1948]

[Malacca — Civil Suit No. 8 of 1946]

Chinese marriage — Secondary wife — Long continued cohabitation — Intention to form permanent union — Repute of marriage.

The question raised in this case was whether the plaintiff was the secondary wife of Yeo Seng Whatt (deceased). The evidence showed that the deceased had cohabited with the plaintiff and treated her as his wife from 1926 till his death. The plaintiff also attended and accompanied the funeral of the deceased.

Held, that although there were no sufficient proof of marriage by ceremony in this case, the plaintiff had substantiated her claim to be the secondary wife of the deceased by proof of (a) long continued cohabitation (b) intention to form a permanent union and (c) repute of marriage.

Cases referred to :—

(1) *Cheang Thye Phin v. Tan Ah Loy* (1920) A.C. 369.

(2) *Re Lee Choon Guan* (deceased) (1935) M.L.J. 78.

(3) *Tan Ah Bee v. Foo Koon Thye & another* (1947) M.L.J. 169.

(4) *In re the Will of Tay Geok Teat, Sunny Tay v. Seow See Neo and another* (1934) M.L.J 83.

(5) *The Six Widows' Case* 12 S.S.L.R. 128.

CIVIL SUIT.

Goh Tiow Wan for the Plaintiff.

M. Brash for the Defendants.

Cur. Adv. Vult.

Callow, J. : — The plaintiff claims :—

1. A declaration that the plaintiff is one of the widows of the deceased and as such she is entitled to share in the Estate of the deceased.
2. Administration of the real and personal estate of the deceased with all the necessary and proper accounts enquiries and directions.
3. An account of the administration of the deceased's estate by the defendants and payment to the plaintiff of the amount found due to her on taking such account.
4. Such further or other relief as the nature of the case shall require and
5. Costs.

Yeo Seng Whatt was at the date of his death the 2nd of January, 1942, an Assistant District Officer, stationed at Alor Gajah. He left a widow, the first defendant, and some family, among whom is the second defendant.

It is established that the first defendant was the lawful wife of the deceased, and that she lived in Malacca, while for the last twenty years or so of his life the deceased worked in Alor Gajah; there he had the use of a Government quarter, but he would frequently visit Malacca.

The paragraphs of the statement of claim most pertinent to the plaintiff's case are :—

> 5. On or about the year 1926 the deceased married the plaintiff who was then a widow with three infant children as his secondary wife at Alor Gajah, Malacca.
>
> 6. After the said marriage a dinner was given and the plaintiff's relatives and a number of the deceased's friends were present.
>
> 7. In the year 1927 the deceased erected a house at Alor Gajah, Malacca wherein he resided with the plaintiff as husband and wife until sometime in March 1938 when he and the plaintiff removed to Government quarters No. 405 Hospital Road Alor Gajah which they occupied till the deceased's death on the 2nd day of January 1942.
>
> 8. The deceased during the said period supported and maintained the plaintiff as his wife and also maintained and educated the plaintiff's three children.
>
> 9. The plaintiff attended the house of the defendants to pay her last respects to the deceased and from there she accompanied the funeral as one of the chief mourners and a widow of the deceased.

The defendants pleaded by way of traverse :—

> 1. The defendants are the lawful widow and daughter respectively of Yeo Seng Whatt deceased.
>
> 2. The defendants deny that the plaintiff is a lawful widow of Yeo Seng Whatt deceased and the defendants deny that the plaintiff is entitled to participate in any way in the distribution of the assets of the said Yeo Seng Whatt deceased.
>
> 3. The defendants deny all and every the allegations contained in the Statement of Claim that the plaintiff is a lawful widow of Yeo Seng Whatt deceased.

I have set out the pleadings because Mr. Brash for the defendants argued that the only issue he had to face is the marriage. That, of course, is obvious; but learned Counsel for the defendants went on to argue that marriage can only be established by proof of the requisite marriage *ceremony*, or by proof of intention to effect permanent union coupled with recognition.

Mr. Brash continued that in view of the failure by the plaintiff to show due performance of the essential ingredients to marriage *ceremony*, then the claim must fail. He submitted that the pleadings indicated the election, and reliance of the plaintiff on the grounds of due performance of the marriage *ceremony*. That, and that alone would he meet; the other proof of secondary marriage by intention and recognition not being specifically pleaded, could not be considered by the Court.

I agree that if the plaintiff's pleadings are read and construed as purporting to show reliance on due marriage ceremonial then the claim must fail.

But was it necessary for the plaintiff to plead more than marriage, without going further and electing upon which method reliance was placed; and it could have been both or either? I know the difficulties sometimes experienced with clients to obtain in sufficient time the details of the evidence they desire to adduce in support of a claim. I have criticised inadequate preparation in civil suits, and I cannot over emphasise the necessity of full and precise pleadings.

In the 12th Edition of *Odgers* on Pleading at page 63 is this passage — I fear it sounds elementary :—

> The function of pleadings then is to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision. In order to attain this object, it is necessary that the pleadings interchanged between the parties should be conducted according to certain fixed rules, which it is our endeavour to state and explain in the following pages. The main purpose of these rules is to compel each party to state clearly and intelligibly the material facts on which he relies, omitting everything immaterial, and then to insist on his opponent frankly admitting or explicitly denying every material matter alleged against him. By this method they must speedily arrive at an issue. Neither party need disclose in his pleading the evidence by which he proposes to establish his case at the trial. But each must give his opponent a sufficient outline of his case.

and on page 81 of the same edition is this :—

> Each party must state his whole case. He must plead all facts on which he intends to rely, otherwise he cannot strictly give any evidence of them at the trial. 'The plaintiff is not entitled to relief except in regard to that which is alleged in the pleadings and proved at the trial.' (Per Warrington, J., in In re Wrightson, (1908) 1 Ch. at p. 799). The Statement of Claim must disclose a good cause of action: the defendant must show a good defence thereto. Omit no averment which is essential to success. Do not plead half a defence and leave the rest to be inferred.

I think I have to consider whether the defendants fully appreciated the plaintiff's claim, and if not should the plaintiff be non-suited? The point raised by learned Counsel for the defendants could have been equally well submitted at the close of the plaintiff's case, in which event the plaintiff might have been afforded an opportunity to amend And still more might the defence, had the plaintiff's claim not been fully realised, have attacked the pleadings and sought further and better particulars. The defence filed was not that the absence of the required ceremonies invalidated the marriage claim, but that the plaintiff was not a lawful widow, and the witnesses for the defence made it quite clear that they denied all

knowledge of the plaintiff's existence, much less acknowledge her status.

Paragraph 6 of the statement of claim may be read to infer recognition *or* due ceremonial. Mr. Goh for the plaintiff answered the argument by saying that had he intended to rely on full ceremony there would have been no need to plead cohabitation. If the defendants had found ambiguity in the pleadings they had their remedy, but I am satisfied that on the opening of the hearing they were well aware of the case they desired to meet.

I find the pleadings, though scanty, did give a general outline of the case and indicated the plaintiff's claim; they allege marriage and that is the issue. I do not believe the defendants have been in any way misled; they understood the nature of the plaintiff's claim, and on this point no miscarriage of justice is apparent. The plaintiff averred marriage and the burden thus lay on her to prove it by whatever mode acceptable. She could have been required by the defence to specify the mode of proposed proof, and if so her election would have bound her, but I do not support learned Counsel for the defendants' argument that the pleadings can only be construed as intention to prove marriage by ceremony, and that because the evidence falls short of such proof therefore the claim fails. I propose to consider all the evidence put before the Court, apply it to the law, and then decide whether the plaintiff has established her claim.

Now it is evident that there is no sufficient proof of marriage by ceremony, and it has been held that proof of the performance of a ceremony is not essential *Cheang Thye Phin v. Tan Ah Loy*[1].

It is therefore necessary to consider whether the plaintiff has substantiated her claim by proof of (a) long continued cohabitation, (b) intention to form a permanent union and (c) repute of marriage *Re Lee Choon Guan* (deceased)[2].

As regards (a) a formidable array of responsible witnesses testified; the second and third Teo Kim Toh and Yeow Chiam were property owners long resident in Alor Gajah, the fourth Lee Teck Chong is the Chief Clerk in the District Office there, and the sixth is the Chinese Interpreter at Alor Gajah. I accept the fact that cohabitation commenced in 1926, and continued up to the death of Yeo Seng Whatt, a long and continued period of 16 years. This raises a general presumption in favour of marriage *Tan Ah Bee v. Foo Koon Thye & another*[3], though as Carey J. said in his judgment it may be immediately rebutted.

I do not think there can be the slightest doubt that Yeo Seng Whatt kept two establishments distinct and apart, one in Malacca in which resided his principal wife (the first defendant), and one in Alor Gajah where he lived with the plaintiff. It is of interest to observe that in *Tan Ah Bee's case* (cited *supra*) it would appear from the judgment of Carey J. that the status of secondary wife is not affected by absence of knowledge by the principal wife of the existence of the secondary wife. But I do not propose to dilate on this; I am quite satisfied that the defendants and the son of the first defendant (Yeo Lui Long 4th D.W.) were aware of the existence and mode of life of the plaintiff. I do not believe for a moment the protestations of the first defendant (the second defendant did not give evidence) that she never knew or heard of the plaintiff; I think it is childish to expect the Court to believe such obvious falsities. In the funeral photograph Ex. B. I am asked to believe that of the six principal female mourners the first defendant did not know the plaintiff who stood by her daughter Yeo Tan Neo (not a witness) and her sister-in-law Toh Gek Neo (since deceased). The first defendant said she and her children, who include the second defendant and 4th D.W., visited Alor Gajah regularly from 1934 up to the death of Yeo Seng Whatt in 1942, yet she never heard, nor did anyone tell her, of the existence of the plaintiff, much less ever see her. It just couldn't be true, it is not human nature.

Turning to (b) the intention to form a permanent union may be inferred from the long continued cohabitation, but not necessarily so. A man may for long keep a mistress with no intention of permanent union. It is true that on first cohabiting the plaintiff did not occupy the Government quarter allocated to the deceased, but lived in a Malay house, and that this continued for some years. Was this due to the deceased's desire to conceal his double life from the first defendant, or was he following Malay custom of the husband going to the wife? It must be observed that a number of the witnesses though Chinese gave their evidence in Malay suggesting long residence in this country and perhaps some assimilation of local custom, they included the plaintiff, the first defendant and the 3rd D.W.

I have also considered whether it is possible for a man to take a woman and for the status of secondary wife to arise in course of time. I think this depends much on circumstances; it should require much more to sustain and prove intent of permanent union if it

originated from association with a woman seemingly of a class more prone to promiscuous inter-course, such as in the cases of *Lee Choon Guan*[2] or *Sunny Tay*[4], although in the *Six Widows' case*[5] such social distinctions are said to be ignored.

But in this case I do not find any such situation. The evidence I accept is that the plaintiff, who was at the material time a young widow with three children, was sought out by the deceased Yeo Seng Whatt in a manner quite proper, and, according to the lights of the parties, quite morally. Some celebration accompanied the union, and that although insufficient to satisfy the requisite ceremonial, does at least go some way to support the intention to form permanent union; it was as the plaintiff said to pronounce the marriage to the elders of the district of Alor Gajah.

The fact that this union persisted for sixteen years and ended only with the plaintiff standing "at the death bed" (Ex. F); the fact that Yeo Seng Whatt educated the plaintiff's children; and the evidence of the witnesses who spoke of the manner in which Yeo Seng Whatt treated and regarded the plaintiff convince me that the intention existed to form a permanent union, and moreover it persisted.

But I have been much exercised over the third requisite "repute of marriage". I think there may have been some confusion of thought between the expressions "repute" and "recognition". Learned Counsel for the defendants in addressing referred to a passage in *Sunny Tay's case*[4] :—

> There must be recognition of such status not only by the parties themselves but by the members of his family.....

In my view the law is more properly derived from the later cases of *Lee Choon Guan*[2] and followed in *Tan Ah Bee v. Foo Koon Thye & another*[3], in which the expression used is "repute of marriage". The passage from the judgment of Terrell J. in the *Lee Choon Guan case*[2] is correctly summarised in the headnote by the sentence "Recognition by the husband's family is one of the strongest forms of reputation of marriage".

Thus repute of marriage must be general and accepted; recognition by the husband's family would be the best evidence in support, but it is not the only essential.

In this case there is conflicting evidence, quite an amplitude being against recognition, although I should say that I do not accept it all. I believe the plaintiff that she did not seek contact with the first defendant because Yeo Seng Whatt feared matrimonial discord through jealously, but I accept the evidence of the son Khoo Seck Poh (5th witness) that he on occasions visited the first defendant and that she knew who he was; these visits are corroborated by Lee Swee Poh (7th witness).

Then there is the photograph Ex. J. Among those taken are the deceased's brother Yeo Joo Whatt and his wife Toh Gek Neo, both of whom have since died. There is also Tengah the daughter of the first defendant's adopted sister Kiok Neo (deceased); Tengah is alive and could have given evidence. Mr. Brash desired the Court to direct attention to the reason for the presence of these relatives and connections of Yeo Seng Whatt. Learned Counsel suggested they may have been there by invitation of Yeo Seng Whatt to attend the marriage of a member of his Office Staff. I think the coincidence would be too remarkable; I agree with the evidence of Khoo Seck Poh that all those in the photograph Ex. J were relatives or near connections. It is obviously an intimate wedding group, and the presence of the plaintiff sitting with Yeo Seng Whatt standing at the back of her chair, and with three relations or connections of his also in the group, suggest not only recognition by some members of the husband's family, but evidence of repute as well.

For the defence Tan Yew Lye (2nd D.W.), an impecunious cousin of Yeo Seng Whatt gave evidence to the effect that he neither knew nor heard of the plaintiff. He used to visit Yeo Seng Whatt to beg, and if in fact he neither saw nor heard of the plaintiff, which I cannot believe, it would only be in keeping with his apparent mentality. He said, and so did the first defendant and Tan Eng Guan a bucolic cousin, that on visiting Yeo Seng Whatt at Alor Gajah they never saw the plaintiff or any of her children; they did, however, see a maid-servant. It is unfortunate that no question as to this person was put to the plaintiff or her witnesses. Her existence was not spoken of until the defence. If indeed she existed she would have been a most material witness. It was utterly impossible for the first defendant and these two men, simple minded though they may be, to have visited Alor Gajah as they said and never to have seen or heard of the plaintiff or any of her children. Had the defence been that the existence and presence of the plaintiff was realised, though deplored, and that her status was that of a mistress or concubine, I could appreciate it better, but for grown adults to come here and pretend complete ignorance of the being of the plaintiff or her family I find absurd and false.

But the defence witness who caused me the most concern was Yeo Lui Long (4th D.W.) the first defendant's son. He is of different education and culture to Tan Yew Lye (2nd D.W.) and Tan Eng Guan (3rd D.W); I am disturbed to learn that he is employed in the Public Relations Department, for I do not find him truthful. He gave evidence at some length concerning the funeral. I suppose that had it not been for the photograph Ex. B the defence witnesses would have persisted in their blank denial of all knowledge of the plaintiff, and refuted her presence at the funeral. Ex. B portrays the plaintiff and her son (5th witness); both are in mourning, though perhaps not so deep as the first defendant and the blood relations, for they are attired in rough calico as opposed to sack-cloth. Khoo Seck Poh (5th witness) stood *next* to Yeo Lui Long (4th D.W.) yet this young man solemnly said he could not remember seeing Khoo Seck Poh there that day. The photograph Ex. B depicts clearly only two men in deep mourning, Yeo Lui Long (4th D.W.) and Khoo Seck Poh (5th witness), and the former invites me to believe that the latter must have "gate-crashed".

As regards the plaintiff this young man goes further and despite her presence in the photograph standing in mourning robes immediately behind the deceased's daughter Yeo Nam Neo, and in the group of chief funeral mourners, he simply says she was not there! To several questions in examination he prefaced his reply by the expression "As far as I remember", and I regret to have to record that I found his memory false.

Khoo Seck Poh (5th witness) testified as to the removal of the body of Yeo Seng Whatt from the Hospital to the home of the principal wife (first defendant); Yeo Lui Long (4th D.W.) claimed he performed this duty; I do not believe him. Another instance of incredibility is the evidence that he spent *all* his school holidays amounting to nearly three months annually for several years at his father's house in Alor Gajah yet he "never saw any strange Chinese woman or children, nor did any one visit the house", indeed he concluded his evidence by stating "During our stays with my father I saw no other person in the house", not even the maid servant spoken of by the impecunious Tan Yew Lye (2nd D.W.) and the rustic Tan Eng Guan (3rd D.W.). Had we to rely on public information from persons of the calibre of Yeo Lui Long (4th D.W.), then I fear we should not only suffer incompetence but falsification.

Quite clearly the plaintiff and her son Khoo Seck Poh (5th witness) attended the funeral as family mourners and their presence was not challenged. They may not have been invited to partake of the funeral repast, I have little doubt that the first defendant ignored and there refused to recognise the plaintiff, but that is very different from ignorance of her existence, or persistent refusal to recognise. It is absurd for the first defendant to say she did not know the person (5th witness) standing at the other side of the hearse in a place of prominence only equalled by herself, or that next to her youngest daughter Yeo Tan Neo stood a mourner (the plaintiff) whom she did not know. Such clumsy lies detract much from credit.

But at Alor Gajah during the lifetime of Yeo Seng Whatt there is ample evidence supporting the plaintiff's claim of repute of marriage. Teo Kim Poh (2nd witness) a man of substance and credit, I noted at the time his responsible demeanour, said he knew the plaintiff as the secondary wife of Yeo Seng Whatt. Yeow Chiam (3rd witness), another man of competence and demeanour, said the plaintiff was Yeo Seng Whatt's wife, they were neighbours of his, and he was aware of the relationship of secondary wife. Then came Lee Teck Chong (4th witness), the Chief Clerk of the District Office, Alor Gajah, who lived for eleven years some 30 yards from the deceased, and who said that on meeting the plaintiff she was introduced to him as the secondary wife of Yeo Seng Whatt, and as such it would seem that he accepted her. Two other witnesses corroborated this evidence of repute, and I accept it.

I therefore find the plaintiff has adduced sufficient evidence to substantiate her claim, and give judgment together with costs in her favour accordingly.

It is declared that the plaintiff is a secondary wife of the deceased Yeo Seng Whatt, and as such she is entitled to share in his estate; secondly, I direct due administration of the said estate with all necessary and proper accounts; and thirdly, such accounts to include an account of the administration of the said estate by the defendants and payment to the plaintiff of any amount found due.

Judgment for the Plaintiff.